



CITY OF PULLMAN

Public Works and Planning Departments

325 S.E. Paradise Street, Pullman, WA 99163
(509) 338-3220 or (509) 338-3213 Fax (509) 338-3282
www.pullman-wa.gov

MEMORANDUM

TO: Pullman Board of Adjustment

FROM: Pete Dickinson, Planning Director PD
Jason Radtke, Assistant Planner JR

FOR: Meeting of September 19, 2016

SUBJECT: Zoning Code Variance Application No. V-16-5
Christenson Front Yard Fence Height Variance

DATE: September 14, 2016

Staff Report No. 16-10

BACKGROUND DATA

Applicant: Ann Christenson.

Property Location: 115 SW Cedar Street (See Attachment "A," Location and Zoning Map).

Applicant's Request: Retain an existing fence at its current height of six feet in a required front yard (See Attachment "B," Application V-16-5; Attachment "C," Site Plan; Attachment "D," Applicant's Photographs; and Attachment "E," Applicant's Proposed Findings of Fact).

Property Zoning: R1 Single Family Residential.

Applicable Zoning Code Regulations: Pullman City Code Subsection 17.35.030(2) states that fences constructed in any required front yard are limited to no more than 42 inches in height.

Property Features: **Current Land Use:** Single family residence.
Lot Area: 12,310 square feet.
Utilities: The property is served by city utilities.

Topography: The subject property is generally flat near its northern end and gently sloped further to the south; there is a steeper slope directly adjacent to the sidewalk along the eastern boundary that increases further to the south.

Adjacent Zoning and Land Use:

North: R2 Low Density Multi-Family Residential district; IOOF cemetery.

West: R1, R2 and C3 General Commercial districts; single family residences, agriculture, and Sunnyside Park.

East: R1 and R2 districts; single family residences.

South: R1 district; single family residences.

Access:

SW Cedar Street, designated as a local access street on the Comprehensive Plan Arterial Street Plan Map; and W Main Street, designated as an arterial collector street on the Comprehensive Plan Arterial Street Plan Map.

Hearing Notification:

Notice of Public Hearing mailed 9/6/16; Notice of Public Hearing published 9/8/16; Notice of Public Hearing posted at subject property 9/8/16.

Comments of Affected Departments/Agencies:

Notification of the Applicant's request was distributed to affected governmental entities. These entities, and a summary of their responses to the notification, are presented below.

- a. **Department of Public Works:** *No response.*
- b. **Protective Inspections Division:** *No response.*
- c. **Department of Public Services:** *No response.*
- d. **Fire Department:** *No response.*
- e. **Police Department:** No law enforcement concerns.
- f. **Pullman School District:** *No response.*

Correspondence Received:

Email message from Pamela Awana Lee, dated 9/14/16 (See Attachment "F").

PERTINENT PLANNING PROVISIONS

There are a number of provisions contained within the Comprehensive Plan and zoning code that relate to this variance request. These provisions, which are available for review at the city's web site (www.pullman-wa.gov), are referenced below.

Comprehensive Plan Goal LU4 and its respective policies.

Zoning Code Sections 17.01.050, 17.35.030, 17.75.010, 17.75.020, and 17.130.020.

ZONING CODE VARIANCE REVIEW CRITERIA

According to Zoning Code Section 17.130.020, a variance may be approved when all of the following findings required by this section can be made.

- (1) Special Circumstances. That because of special circumstances relating to the property, the strict enforcement of the Zoning Code would deprive the owner of development rights and privileges permitted to other properties in the vicinity with the same zoning.
 - (a) Special circumstances include the size, shape, topography, location of the property and surrounding property, and environmental factors such as vegetation, streams, ponds, and wildlife habitats.
 - (b) Special circumstances should not be predicated upon any factor personal to the owner/applicant such as age or disability, extra expense which may be necessary to comply with the Zoning Code, the ability to secure a scenic view, the ability to make more profitable use of the property, or any factor resulting from the action of the owner/applicant.
- (2) Special Privilege. That approval of the variance is not a grant of a special privilege to the property in comparison with the limitations upon other properties in the vicinity with the same zoning.
- (3) Comprehensive Plan. That approval of the variance is consistent with the Comprehensive Plan.
- (4) Zoning Ordinance. That approval of the variance is consistent with the purposes of the zoning code and the zone district in which the property is located.
- (5) Not Detrimental. That the variance as approved or conditionally approved will not be significantly detrimental to the public health, safety, and welfare, or injurious to the property or improvements in the vicinity and same zone.

- (6) Minimum Variance. That the approved variance is the minimum necessary to allow the owner the rights enjoyed by other properties in the vicinity with the same zoning.

STAFF ANALYSIS AND RECOMMENDATION

Planning staff is in favor of granting the proposed variance request. The applicant has requested to retain an existing six-foot-high fence in the required front yard of the property at the aforementioned address. Planning department staff only recently became aware of the nonconforming nature of the fence, and it asked the owner to take appropriate steps to resolve the matter. Ms. Christenson indicates in her application materials that this fence was built in 2005 to protect her privacy and safety. She states that the fence affords additional security, given that the house sits in a recess below the level of the sidewalk, giving passersby an elevated vantage point from which to observe the property and its occupants. This area receives significant foot traffic due to its proximity to Sunnyside Park, especially during warm weather and most significantly during events such as the City of Pullman's Fourth of July celebration.

The approval of a variance cannot result in a grant of special privilege to the property in comparison with the limitation upon other properties in the vicinity with the same zoning. Planning staff feels that, in this case, special circumstances are present at the subject property which would justify the granting of a variance for this proposal. The topography of the subject property could deprive the property owner of privileges permitted to other properties in the vicinity under the same restrictions. Given the elevation drop that exists at the back of the sidewalk, it appears that a fence that would be compliant with Pullman City Code would be inadequate to provide the privacy afforded to other properties in the area. In staff's view, the raised nature of the sidewalk in relation to the house, coupled with the location of the subject property relative to Sunnyside Park, which generates an abundance of pedestrian traffic in this area, furnish appropriate justification for the increased fence height.

The approval of this variance request would appear to be consistent with the policies of the Comprehensive Plan and the relevant purposes of the Zoning Code and zone district in which the property is located, as the proposal would promote "high quality diversified life styles" within a residential neighborhood [Comprehensive Plan Goal LU4] and it would "preserve and protect access to light, privacy, views, open space, and natural features" [Zoning Code Subsection 17.75.010(2)]. Planning staff believes the granting of this variance would not be detrimental to the public health, safety, or welfare, or injurious to the property and adjacent properties. The proposed fence structure would not adversely affect pedestrian or vehicular traffic utilizing Cedar Street.

The applicant has indicated in her findings of fact that this request represents the minimum variance needed to "provide privacy, security, safety, and a sense of well being..." Planning

staff agrees that a six-foot-high fence is the minimum fence height necessary to effectively prevent breaches of privacy at this property because of the site's topography as well as its location proximate to Sunnyside Park.

In conclusion, planning staff recommends that the Board approve this variance request without conditions because it appears to be consistent with the city's Comprehensive Plan goals and Zoning Code purposes, and it appears to otherwise meet the necessary criteria for granting a variance.

FINDINGS OF FACT AND CONCLUSIONS

The applicant has provided proposed findings of fact for this case (Attachment "E"). Planning staff has also prepared findings of fact and conclusions for consideration at the public hearing. Staff's findings and conclusions are incorporated in draft Resolution No. BA-2016-7 (See Attachment "G").

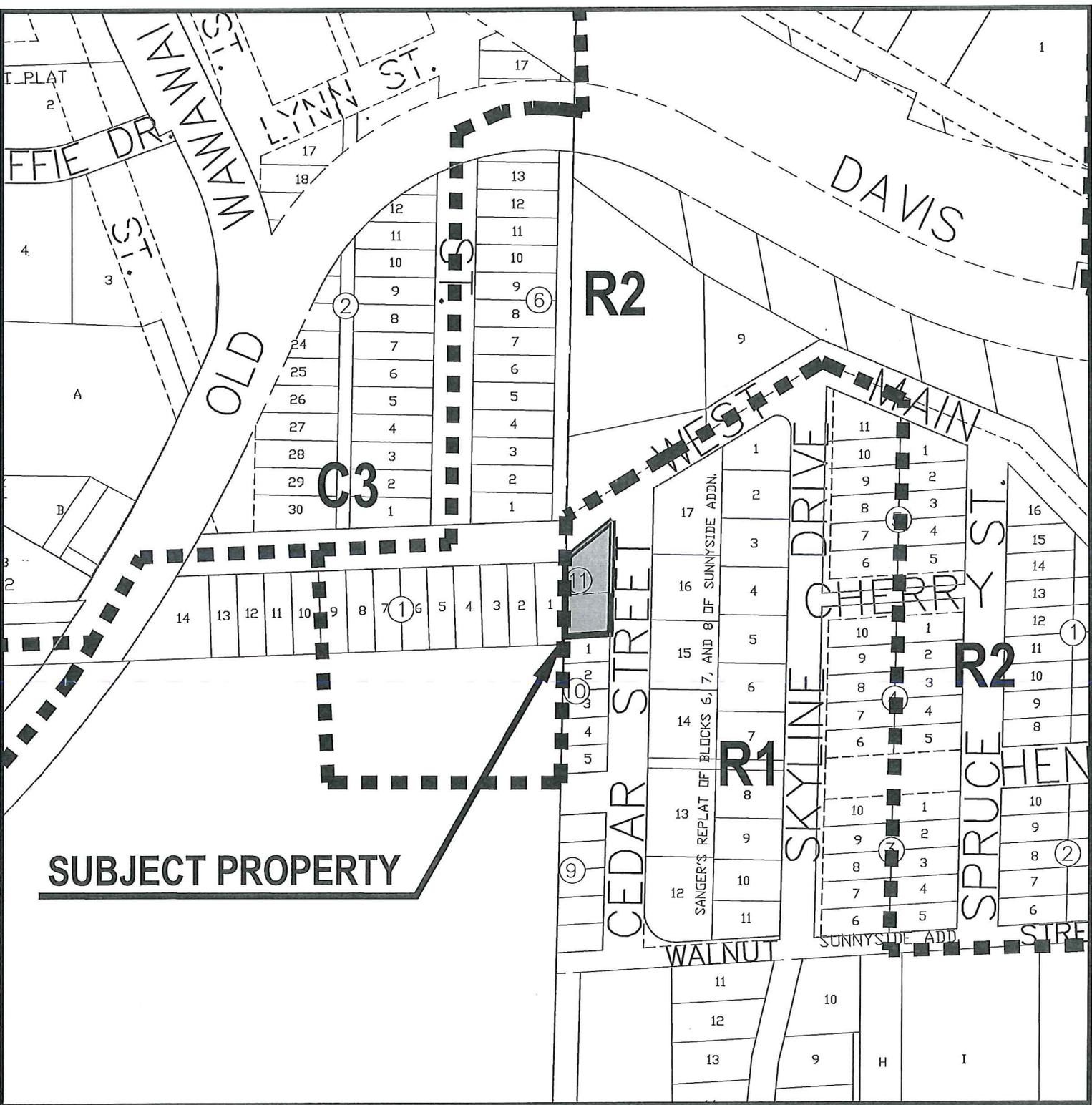
Prior to making a decision to approve or deny a zoning code variance, the Board must adopt findings of fact and conclusions which specify the basis for its decision. The Board may abstract findings and conclusions from the Applicant, staff, public, or Board of Adjustment members.

ACTION REQUESTED

- A. Establish rules of procedure and ask Appearance of Fairness questions.
- B. Accept staff report.
- C. Take testimony on the request for a zoning code variance.
- D. Adopt, by motion, Findings of Fact.
- E. Adopt, by motion, Conclusions.
- F. Move to approve or deny the granting of the zoning code variance. If the motion is to approve, the same motion should include any conditions the Board wishes to apply.

ATTACHMENTS

- "A" Location and Zoning Map
- "B" Variance Application V-16-5
- "C" Site Plan
- "D" Applicant's Photographs
- "E" Applicant's Proposed Findings of Fact
- "F" Email Message from Pamela Awana Lee, dated 9/14/16
- "G" Draft Resolution No. BA-2016-7



SUBJECT PROPERTY



ZONING DISTRICT BOUNDARY



P:\Engr & CAD\PLANNING-PD-PARKS-M&O DOCUMENTS\PLANNER3-Variances\L&Z 2016\115 SW Cedar St\V-16-5 L&Z.dwg

LOCATION & ZONING MAP

CASE NUMBER
V-16-5

ATTACHMENT "A"

RECEIPT NO.: 43535
DATE APPLICATION RECEIVED: 8-23-16
DATE APPLICATION ACCEPTED AS COMPLETE: _____

CITY OF PULLMAN
ZONING CODE VARIANCE APPLICATION
Pullman City Code 17.130

APPLICANT:

NAME: Ann Christenson
ADDRESS: 115 SW Cedar
TELEPHONE: 509-332-1810
STATUS (property owner, lessee, agent, purchaser, etc.): property owner

PROPERTY OWNER (if different than applicant):

NAME: same as above
ADDRESS: _____
TELEPHONE: _____

PROPERTY LOCATION (general or common address):

115 SW Cedar, Pullman, WA

VARIANCE REQUESTED:

State Pullman City Code section(s) involved, and give description of and reason for request.

Pullman city Code section involved: 17.35.030

Variance Requested to Retain current 6 feet height of front fence.

All information provided in this application is said to be true under penalty of perjury by the laws of the State of Washington.

Ann Christenson
Applicant's Signature

Aug, 23, 2016
Date



Front Fence 115 SW Cedar Street

RECEIVED

SEP 13 2016

PUBLIC WORKS/PLANNING



Front door, 115 SW Cedar Street. View through Front Fence.

ATTACHMENT "D"

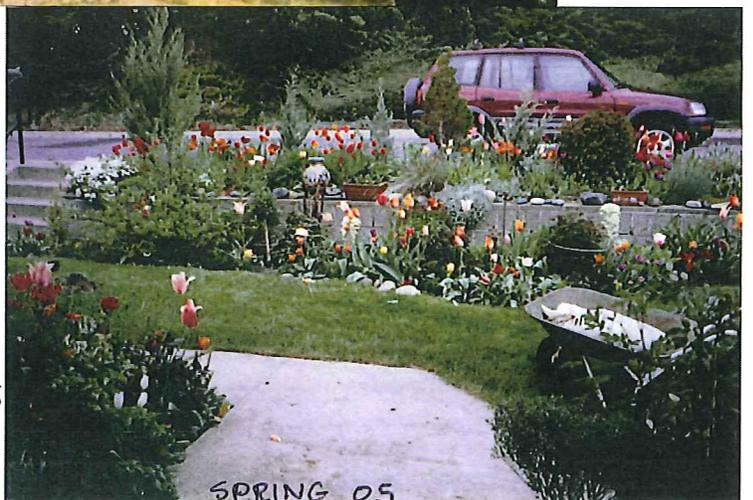
View from kitchen door
onto patio facing Cedar
Street



Inside front fence facing
Cedar Street, Sept. 2016

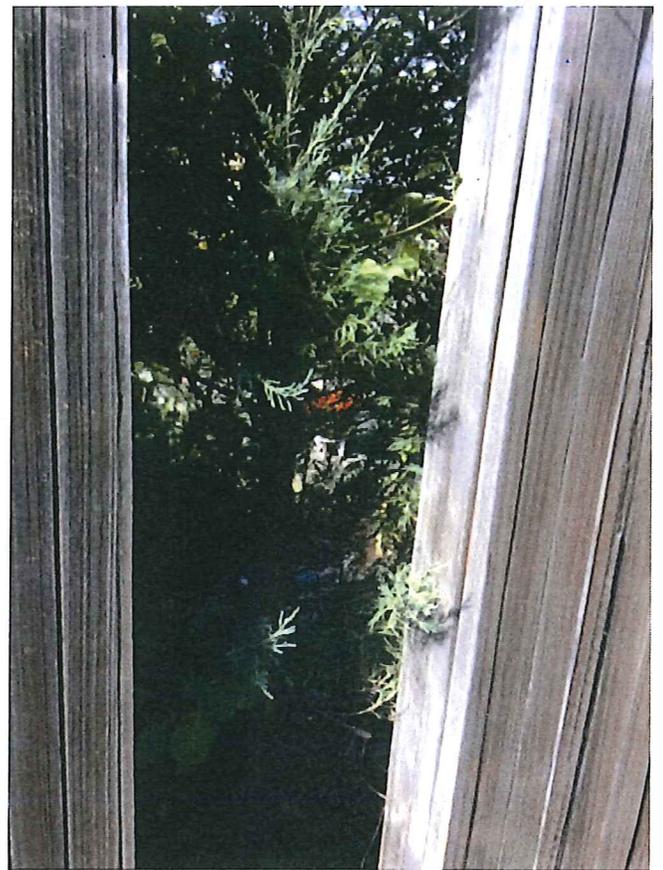


View from patio facing
Cedar street
spring 2005





South end of Front Yard Fence, 115 SW Cedar



115 SW Cedar Street
garden peek a boo gap, Front Fence



North end of front fence

Variance Application
Parcel Number: 1-1335-00-11-00-0000

APPLICANT & PROPERTY OWNER
NAME: ANN CHRISTENSON
ADDRESS: 115 SW CEDAR STREET
TELEPHONE: 509 332 1810
PROPERTY LOCATION: 115 SW CEDAR
VARIANCE REQUESTED: Pullman City Code sections involved: 17.35.030
Variance requested for Front Fence to retain height of 6 feet (2.5" higher than current city code.)

APPLICANT'S PROPOSED FINDINGS OF FACT

In 2005 I had a 6 foot high front yard fence built. The fence serves two functions. The first is to provide privacy, security, safety and a sense of well being for myself a single woman living alone on Cedar street, a major arterial road with significant pedestrian and car traffic that connects with the primary entrance to Sunnyside Park. The second is to provide an aesthetically pleasing visual environment and setting as well as the accompanying sense of protection for my home's primary outdoor living space. At the time when the fence was built neither myself nor my contractor were aware of the city code height limitation for front yard fences.

Sunnyside Park is used year round by the community. It experiences heavy usage in the summer, spring and fall for weddings, family reunions, church gatherings, walkers, dog walkers, runners and on the 4th of July when 5000 people walk by the front of my home. My home is the first house from the main road on the west side of the Cedar street where people turn off to go to the park. My house and my neighbor's house each have double lots thus my house lot is flanked by open lots on either side.

The house and adjoining covered patio are 17.5 feet back from the sidewalk. The house is built on a slope and the Cedar street sidewalk is raised 2.5 feet above the foundation of the patio and house. The covered patio (part of the original house) faces Cedar street and is a significant private outdoor space, accessible from the kitchen, dining room and living room areas receiving morning sun and afternoon shade and providing protection from south-west sun and the rain. I added a front yard garden at the level of the patio making a green restful private sanctuary for anyone sitting on the patio. The height of the fence is necessary to keep sidewalk and street traffic from looking straight into the patio, living room and bedroom space. The fence also lessens the noise from car and pedestrian traffic.

The backyard of the house is primarily a driveway giving access to the garage which is under the house. The back yard is 8 feet below the front foundation and the patio level. Additionally the backyard's juxtaposition to a neighboring feed lot and animal pen, which generates animal noise and waste aromas, makes it's use as private outdoor space less than optimal. When friends gather for an evening meal out of doors the only place to entertain is in the front patio area. I am unable and ashamed to entertain in the back area because smell and noise from the animal pen and pasture that is next door.

The fence is an unusual design and was constructed with aesthetic considerations. It is a well built sculptural structure designed to reference the undulating waves of the rolling Palouse hills. It has an open vista to the front door and peekaboo garden viewing gaps. It does not continue

down the side yard; it is double walled and each section is 8" deep and free-standing. It provides both security and privacy for sitting on the covered patio and for front living room and bedroom windows. The fence delineates a boundary; it is a limited screen discouraging preying, curious eyes and ears while not signaling fortification from community. It also makes me feel more secure in my living space.

The fence is not detrimental to health and safety and welfare or injurious to the property or improvements in the vicinity. It is consistent with the purposes of the Zoning code and the zone district in which the property is located and the surrounding area. It does not block vision to traffic coming or going on Cedar street or for car or foot traffic turning from Main to Cedar or visa versa. It does not compromise the Comprehensive Plan. It maintains the residency status of the property.

I am asking for a variance to the relevant city code in order to retain my fence in it's present form. Thank you for your time in reviewing my application and considering my request.

Dickinson, Pete

From: Lee, Pamela Awana <pamela_lee@wsu.edu>
Sent: Wednesday, September 14, 2016 2:12 PM
To: Dickinson, Pete; Radtke, Jason
Cc: Christenson, Ann
Subject: Re: Ann Christenson Variance Application for 115 SW Cedar Street, Pullman, WA

September 14, 2016

Re: Ann Christenson Variance Application for 115 SW Cedar Street, Pullman, WA

Dear Pete Dickinson and Jason Radtke,

I am writing to support Ann Christenson's application for a variance with the City of Pullman. Christenson has recently learned that her front residence fence exceeds city height code. As a colleague who has attended social events at Ann Christenson's home at 115 SW Cedar Street, I firmly believe that Professor Christenson's application for this exception is just and is necessary for her to enjoy her property and to entertain guests at her home.

Attending a department function during warm weather a few years ago, I learned that the nasty odor at Christenson's home is from animals owned by her neighbors on the property adjacent to hers, on her west-southwest. Her back yard, back deck, her west facing kitchen are often subjected to a rotting odor that I would not be able to tolerate were I the homeowner at 115 SW Cedar. As our predominant winds blow from the direction of the source of the odor, the stench Christenson is subject to is frequent. Christenson has done her best to adapt to the situation, through landscaping, planting trees, and building a fence that affords some privacy and attempts to mitigate a problem that she does not control.

I have attended social functions at Ann Christenson's home in pleasant Palouse weather when guests want to be outdoors. People gather in the front yard, to avoid the unpleasantness of the neighboring problem. The front fence affords privacy for Ms. Christenson, and a reasonable distance from the foul odors of the backyard neighboring animals. Guests cannot sit in the back yard or on the back deck during the warm months when we want to sit outside. Without the high front fence, Ann would lose the reasonable privacy of dining outside where she is not seen by all who drive by her corner property, and the comfort of sitting outdoors on her own well-maintained property.

I write to support Ann Christenson's variance to retain her 72" front fence. Her fence, including the front portion, is a reasonable adaptation to avoid a problem in her back yard. It allows Christenson a homeowner's privacy while attempting to avoid the odor predicament next to her back yard.

Sincerely,

Pamela Awana Lee
625 NW Gary Street
Pullman, WA 99163

**BEFORE THE BOARD OF ADJUSTMENT
FOR THE CITY OF PULLMAN**

In the Matter of) Resolution No. BA-2016-7
Zoning Code Variance)
Application No. V-16-5) A Resolution Adopting Findings of Fact
(Christenson Front Yard) and Conclusions Representing the Official
Fence Height Variance)) Determination of the City of Pullman
) Board of Adjustment

WHEREAS, an application was duly filed by Ann Christenson for a zoning code variance to allow the retention of an existing fence at its current height of six feet in a required front yard at 115 SW Cedar Street, said property being more particularly described in Exhibit "A," attached hereto and by this reference made a part hereof as though set forth in full herein; and,

WHEREAS, a notice of the Board of Adjustment public hearing on this matter was mailed to the applicant and property owners within 300 feet of the subject property on September 6, 2016, said notice was posted at the subject property on September 8, 2016, and said notice was published in the Moscow-Pullman Daily News on September 8, 2016; and,

WHEREAS, a public hearing was held before the Board of Adjustment on September 19, 2016, in the Council Chambers at City Hall, 325 SE Paradise Street, Pullman, Washington, at which time public comment from persons favoring and opposing this zoning code variance application was solicited, and after hearing public comment thereon, Board members deliberated over the matter in open session; and,

WHEREAS, this Board now considering it appropriate to enter its formal written decision, makes and enters the following

Findings of Fact

1. On August 23, 2016, Ann Christenson filed a zoning code variance application with the planning department to allow the retention of an existing fence at its current height of six feet in a required front yard at 115 SW Cedar Street on Sunnyside Hill; said application was labeled by planning staff as No. V-16-5.
2. The subject property is located within an R1 Single Family Residential zoning district.
3. Pullman City Code Subsection 17.35.030(2) states that fences constructed in any required front yard are limited to no more than 42 inches in height.
4. The subject property is 12,310 square feet in size and is occupied by a single family residence.
5. The subject property is served by city utilities.

6. The subject property is generally flat near its northern end and gently sloped further to the south; there is a steeper slope directly adjacent to the sidewalk along the eastern boundary that increases further to the south.
7. The area to the north is zoned R2 Low Density Multi-Family Residential and is occupied by the IOOF cemetery; the area to the east is zoned R1 and R2 and is occupied by single family residences; the area to the south is zoned R1 and is occupied by single family residences; the area to the west is zoned R1, R2 and C3 General Commercial and is occupied by single family residences, agriculture, and Sunnyside Park.
8. Access to the subject property is gained by way of SW Cedar Street, designated as a local access street on the Comprehensive Plan Arterial Street Plan Map; and W Main Street, designated as an arterial collector street on the Comprehensive Plan Arterial Street Plan Map.
9. Staff Report No. 16-10, dated September 14, 2016, includes the following description of responses from agencies to which a notice of the subject application was transmitted:

Department of Public Works: *No response.*

Protective Inspections Division: *No response.*

Department of Public Services: *No response.*

Fire Department: *No response.*

Police Department: No law enforcement concerns.

Pullman School District: *No response.*

10. On September 14, 2016, the planning department received an email message from Pamela Awana Lee in which she expressed support for the applicant's request.
11. Staff Report No. 16-10 states that the following Pullman Comprehensive Plan and zoning code provisions pertain to the subject application:

Comprehensive Plan Goal LU4 and its respective policies.

Zoning Code Sections 17.01.050, 17.35.030, 17.75.010, 17.75.020, and 17.130.020.

12. Staff Report No. 16-10 states the following:

Planning staff is in favor of granting the proposed variance request. The applicant has requested to retain an existing six-foot-high fence in the required front yard of the property at the aforementioned address. Planning department staff only recently became aware of the nonconforming nature of the fence, and it asked the owner to take appropriate steps to resolve the matter. Ms. Christenson indicates in her application materials that this fence was built in 2005 to protect her privacy and safety. She states that the fence affords additional security, given that the house sits in a recess below the level of the sidewalk, giving passersby an elevated vantage point from which to observe the property and its occupants. This area receives significant foot traffic due to its proximity to Sunnyside Park, especially

during warm weather and most significantly during events such as the City of Pullman's Fourth of July celebration.

13. Staff Report No. 16-10 includes the following paragraph:

The approval of a variance cannot result in a grant of special privilege to the property in comparison with the limitation upon other properties in the vicinity with the same zoning. Planning staff feels that, in this case, special circumstances are present at the subject property which would justify the granting of a variance for this proposal. The topography of the subject property could deprive the property owner of privileges permitted to other properties in the vicinity under the same restrictions. Given the elevation drop that exists at the back of the sidewalk, it appears that a fence that would be compliant with Pullman City Code would be inadequate to provide the privacy afforded to other properties in the area. In staff's view, the raised nature of the sidewalk in relation to the house, coupled with the location of the subject property relative to Sunnyside Park, which generates an abundance of pedestrian traffic in this area, furnish appropriate justification for the increased fence height.

14. Staff Report No. 16-10 states the following:

The approval of this variance request would appear to be consistent with the policies of the Comprehensive Plan and the relevant purposes of the Zoning Code and zone district in which the property is located, as the proposal would promote "high quality diversified life styles" within a residential neighborhood [Comprehensive Plan Goal LU4] and it would "preserve and protect access to light, privacy, views, open space, and natural features" [Zoning Code Subsection 17.75.010(2)]. Planning staff believes the granting of this variance would not be detrimental to the public health, safety, or welfare, or injurious to the property and adjacent properties. The proposed fence structure would not adversely affect pedestrian or vehicular traffic utilizing Cedar Street.

15. Staff Report No. 16-10 reads, in part, as follows:

The applicant has indicated in her findings of fact that this request represents the minimum variance needed to "provide privacy, security, safety, and a sense of well being..." Planning staff agrees that a six-foot-high fence is the minimum fence height necessary to effectively prevent breaches of privacy at this property because of the site's topography as well as its location proximate to Sunnyside Park.

16. Staff Report No. 16-10 includes the following paragraph:

In conclusion, planning staff recommends that the Board approve this variance request without conditions because it appears to be consistent with the city's Comprehensive Plan goals and Zoning Code purposes, and it appears to otherwise meet the necessary criteria for granting a variance.

From the foregoing Findings of Fact, this Board now makes the following

Conclusions

1. The strict enforcement of the zoning code in this instance would deprive the applicant of development rights and privileges permitted to other property owners in the vicinity with the same zoning because there appear to be special circumstances associated with this proposal related to the topography and location of the subject property.
2. Approval of this variance request would not be a grant of a special privilege to the subject property in comparison with the limitations upon other properties in the vicinity with the same zoning.
3. This variance request appears to be consistent with the applicable goals and policies of the Comprehensive Plan.
4. This variance request appears to be consistent with the purposes of the zoning code and the zone district in which the subject property is located.
5. The granting of this variance would not be significantly detrimental to the public health, safety, and welfare, or injurious to the property or improvements in the vicinity and same zone.
6. The approval of this variance is the minimum necessary to allow the owner the rights enjoyed by other properties in the vicinity with the same zoning.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Adjustment for the city of Pullman that, based upon the foregoing Findings of Fact and Conclusions, this Board now makes and enters its formal

Decision

Zoning Code Variance Application No. V-16-5 is hereby approved without conditions.

DATED this _____ day of _____, 2016.

Michael Kallaher, Chairperson
Pullman Board of Adjustment

ATTEST:

Pete Dickinson, Planning Director

LEGAL DESCRIPTION

A portion of the Northeast Quarter of Section 6, Township 14 North, Range 45 East, Willamette Meridian, located in the City of Pullman, Whitman County, Washington, and being more particularly described as follows:

All of Block 11 of Sunnyside Addition to Pullman according to the Plat thereof recorded in Volume C of Plats, Page 20, records of Whitman County.

TOGETHER WITH vacated portions of streets or alleys attached by order of law, if any.

TOGETHER WITH vacated portions of Cedar Street and West Main Street (previously known as Wawawai Street and Colfax Road) per Vacation Ordinances A-116, B-29 and B-287.

Approved for Form:


Engineering Technician


Date